

CALIFORNIA ENERGY COMMISSION

1516 NINTH STREET
SACRAMENTO, CA 95814-5512

February 8, 2010

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| DOCKET | |
| 09-AFC-5 | |
| DATE | FEB 08 2010 |
| RECD. | FEB 11 2010 |

Shane Conway
Ellison, Schneider & Harris L.L.P
2600 Capitol Avenue, Ste. 400
Sacramento CA 95816

RE: **Application for Confidentiality, System Impact Study
Abengoa Mojave Solar Project
Docket No. 09-AFC-5**

Dear Mr. Conway:

On January 6, 2009, you submitted an Application for Confidentiality on behalf of the Abengoa Mojave Solar Project (“Applicant”) (Docket No. 09-AFC-5). The application seeks confidential designation for the Interconnection Facilities Study (“IFS”), including attachments.

Applicant states that the IFS:

. . . should be held confidential indefinitely in order to protect the information identified therein. . .

It has been suggested to the Applicant that the IFS may not be disclosed due to restrictions and/or prohibitions set forth in the Critical Infrastructure Information Act of 2002 (“CIIA”), codified at 6 U.S.C. §§ 131 – 134. . . related to the regulation of the use and disclosure of information submitted to the Department of Homeland Security (DHS) about vulnerabilities and threats to critical infrastructure. Further, there may be prohibitions of the use or disclosure of this information in the CAISO Tariff, including, but not necessarily limited to, Appendix U of the *California Independent System Operator Corporation FERC Electric Tariff*, the Standard Large Generator Interconnection Procedures (the “LGIP”). In particular, the LGIP’s definition of “Confidential Information” in Section 1.2.2 and the LGIP’s Section 13.1 on “Confidentiality,” and the subsections thereto, may include prohibitions on the use or disclosure of this information.

A properly filed application for confidentiality shall be granted under the California Code of Regulations, title 20, section 2505(a)(3)(A), “if the applicant makes a reasonable claim that the Public Records Act or other provision of law authorizes the [Energy]

Commission to keep the record confidential”.

Applicant provides no legal or factual justification for why the IFS is subject to the prohibitions in the CIIA. Specifically, Applicant has not shown that the IFS has been submitted to a covered Federal agency for use by that agency regarding the security of critical infrastructure and protected systems. Therefore, Applicant has not made a reasonable argument under the California Energy Commission's regulations that the IFS should not be disclosed due to the restrictions of the CIIA.

Applicant also argues that the LGIP prohibits the IFS from being disclosed. Section 1.2.2 of the LGIP defines “Confidential Information” as:

any confidential, proprietary or trade secret information of a plan, specification, pattern, procedure, design, device, list, concept, policy or compilation relating to the present or planned business of a Party, which is designated as confidential by the Party supplying the information, whether conveyed orally, electronically, in writing, through inspection, or otherwise, subject to Section 13.1 of this LGIP.

Section 13.1 of the LGIP, titled “Confidentiality,” states:

Confidential Information shall include, without limitation, all information relating to a Party’s technology, research and development, business affairs, and pricing, and any information supplied by any of the Parties to the other Parties prior to the execution of an LGIA.

However, Applicant fails to discuss why these portions of the LGIP apply to the IFS at hand. Applicant does not make an argument that the IFS is proprietary or trade secret information, as defined in section 1.2.2, or that the information is not already public information. Furthermore, Applicant does not state that the IFS relates to Applicant’s technology, research and development, business affairs, or pricing, pursuant to section 13.1 of the LGIP. Finally, Applicant does not explain the legal relevance, if any, of the LGIP to the criteria in the Public Records Act.

Therefore, Applicant has not made a reasonable argument under the California Energy Commission's regulations that the IFS should not be disclosed due to the restrictions of the California Independent System Operator’s LGIP. Not only that, but Applicant has not demonstrated that the information in the IFS is not already public information.

Due to the reasons stated above, the application does not provide sufficient explanation upon which the Commission may grant the request, and the application for confidential designation of the IFS is denied.

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The procedures and criteria for appealing any part of this decision are set forth in the California Code of Regulations, title 20, section 2505. Be advised that an appeal of this decision must be filed within fourteen days from my decision. During those fourteen days, the IFS will not be publicly disclosed. If you have any questions concerning this matter, please contact Deborah Dyer, Senior Staff Counsel, at (916) 654-3870.

Sincerely,

/s/

Melissa Jones
Executive Director

cc: Docket Unit
Energy Commission Project Manager